

### Remarks

This Response is being filed within the statutory period for reply which ends on September 30, 2003.

Claims 36 and 42-43 are currently pending in this case. By this Amendment, claim 36 has been amended, claims 37-41 have been canceled, and new claims 42 and 43 have been added. Original claims 1-15 were previously canceled by Preliminary Amendment dated May 10, 2001.

### Objections to the Drawings

The Examiner has objected to the drawings on the grounds that the drawings do not show a "second inflow container" in fluid communication with a pump as specified in claim 8. Applicants note that claim 8 was canceled by Preliminary Amendment dated May 10, 2001, and that no currently pending claims describe such a feature. Accordingly, the Examiner's objection is believed to be moot.

### Objections to the Claims

The Examiner has objected to claims 38-41 as containing subject matter that is not properly described in the specification. Applicants believe that this objection is also moot given the fact that claims 38-41 have been canceled, and none of newly added claims 41-42 recite a second inflow container.

### Rejections Under 35 U.S.C. §102 and § 103

The Examiner has rejected claims 36 and 37 under 35 U.S.C. § 102 as being anticipated by Schmidt et al., and claims 38-41 under 35 U.S.C. § 103 as being unpatentable over Vancaillie in view of Tu. Independent claim 36 has been amended to recite additional limitations that applicants believe distinguish over, and render the claim patentable in view of, the cited references. More particularly, claim 36 has been amended to further recite

a first weighing device that weighs fluid in the first inflow container;  
a second weighing device that weighs fluid in the outflow container;

09/852,880

a processor electrically coupled to the first and second weighing devices, the processor receiving input data from the first and second weighing devices representing the weights of the inflow and outflow containers respectively;

an input device electrically coupled to the processor for inputting to the processor a specific gravity of the fluid; and

a display device for displaying output data from the processor,

wherein the processor continuously calculates, using the inputted weights of the inflow and outflow containers and the inputted fluid specific gravity, the difference in fluid volume between the inflow and outflow containers, and wherein said volume is displayed on the display device.

Thus, amended claim 36 now recites a system that allows for inputting the specific gravity of the particular fluid being used in the medical procedure, and using this information in conjunction with weight measurements, determines and provides as an output on a display device the difference in the *volume* of fluid between the inflow and outflow containers. Thus, the user is provided directly and accurately with a reading of the volume of fluid absorbed in the body, rather than being provided with a value for the weight difference and requiring the user to make the correlation or an estimate between weight and volume by some other means. In this manner, the system is readily adaptable to the use of any different type of fluid.

Neither Schmidt, Vancaille, nor Tu, alone or in combination, disclosure or suggest a device having all the features recited in amended claim 36. More specifically, none of the cited references disclose an automated device wherein the specific gravity of the fluid can be inputted, and wherein the specific gravity is used by the processor in combination with the weight of the inflow and outflow containers to display as an output the *volume* of the fluid as opposed to the weight of the fluid. Vancaille describes a device that measures the relative fluid weights, and automatically displays the weight difference as an estimate of the absorbed fluid volume.

As indicated above, the presently claimed invention, which accepts as an input the specific gravity of the fluid being used and displays as an output the difference in fluid *volume* between the inflow and outflow containers, automatically provides a more accurate and reliable means by which to assess the absorbed fluid, which is the critical

piece of information needed. In Vancaille, the difference in fluid weight is used as an "estimate" (see Col. 2, line 66 – Col. 3, line 7) of fluid volume, and thus is inherently inaccurate, particularly if the device is to be used for different procedures that require different types of fluids. Thus, the device of Vancaille requires and assumes that the user can accurately make the correlation between weight and volume. Neither the Schmidt nor the Tu references provide any additional disclosure in regards to the features of the present invention described above.

Accordingly, as the references cited by the Examiner, either alone or in combination, fail to teach or suggest several elements recited in amended claim 36, applicants submit that this claim is presently patentable over such references. Claim 42-43 are similarly patentable by virtue of their dependence on a patentable base claim. Reconsideration and allowance of all pending claims is respectfully requested.

#### Conclusion

In view of the foregoing, applicants believe that each of pending claims 36 and 42-43 are in condition for allowance. Accordingly, applicants respectfully request that a notice of allowance be issued.

The Commissioner is hereby authorized to charge any fee that may be due in connection with this Amendment to deposit Account No. 10-0750/FEM-0051/MJS.

Should any minor points remain prior to issuance of a Notice of Allowance, the Examiner is requested to telephone the undersigned at the below-listed telephone number.

Respectfully submitted,



Melissa J. Szanto  
Attorney for the Applicants  
Reg. No. 40,834

Johnson & Johnson  
One Johnson & Johnson Plaza  
New Brunswick, NJ 08933-7003  
(732) 524-1365  
DATED: September 30, 2003

09/852,880